

REMARKS/ARGUMENTS

Applicant has received and reviewed the Office Action dated February 11, 2008. In such Office Action, claims 1-11, 16-23, 28-34, 37, 42-49, 52-58 and 87-94 were rejected under 35 U.S.C. §103(a) as being unpatentable over Pulliam (1,517,456) in various combinations with Krug (4,226,036), Grose et al. (2002/0054940), Duncan (6,058,637) and McDermott (3,965,589). Applicant traverses these rejections in part because the primary reference Pulliam is non-analogous art, among other reasons.

According to the independent claims, as amended, the present invention is directed to an identification tag system for an infant or small child wherein an elongated elastomeric wristband is configured in a small diameter closed loop wristband wrapped around the wrist or ankle of the infant or small child. An elastomeric identification tag is attached to the wristband by threading the wristband through a pair of slots on the tag such that the tag is oriented with a long dimension thereof perpendicular to a long dimension of the wristband. Independent claim 28 includes a further limitation of "information associated with the infant or small child carried on said information-receiving means." Independent claim 42 includes as additional limitations a plurality of identification tags and a supply of wristbands, as well as, a process or station for applying information to each of the identification tags. Independent claim 87 also includes as a limitation information associated with the infant or small child carried on said information-bearing surface area.

As previously argued by applicant, the limitation that the identification tag system is for an infant or small child is eminently important to the invention claimed herein. When an identification tag system is used on an infant or small child the wristband will necessarily form a "small diameter" closed loop around the wrist or ankle of the infant or small child. This closed loop is necessarily of a smaller diameter than the closed loop that would be formed around the wrist or ankle of an adolescent or adult person. If the closed loop is not of a sufficiently small diameter, then the wristband may easily slide over the hand or foot of the infant or small child thereby separating it from the

identification system. A person having ordinary skill in the art in the field of identification tag systems will be knowledgeable on this limitation and the special requirements associated with identification systems for infants and small children.

A person having ordinary skill in the art will also be aware of other problems associated with identification systems for use with infants and small children, notably, the high degree of curvature associated with an identification system having a small diameter closed loop wristband. This high degree of curvature is known to cause difficulty in reading identification tags in prior art identification systems. The inventor submits that the invention claimed herein, i.e., the mounting of the identification tag onto the wristband "such that the long dimension of the tag extends generally perpendicular to a long dimension of said wristband so as to maximize a readable area of the information receiving means on the tag" minimizes the degree of curvature of the tag when mounted on the small diameter wrist or ankle of the infant or small child and such was not obvious at the time of filing the instant application.

Applicant notes that the Pulliam reference is primarily directed to a system to identify an army soldier, i.e. an adult, wearing the identification band at the time of injury or death. This is a purpose far removed from the claimed purpose of the present invention, namely, an identification system for an infant or small child. A person having ordinary skill in the art of developing an identification system for use with an infant or small child and knowledgeable on the special considerations involved in such a system would not look to Pulliam for those teachings.

Applicant also notes that while the Office Action asserts that the combination of Pulliam with one or more of the additional references cited therein was obvious at the time of filing the instant application, no one having ordinary skill in the art had combined such teachings to achieve the present invention in the almost 80 years between the issuance of Pulliam and the filing of the instant application. The problems associated with reading identification information from a wristband on the wrist of an infant has been recognized by the prior art for decades. Just one example of such recognition is the patent to Vlerebome (4,121,360) issued in 1978, which recognized the need for an

identification band in which the identification information extended beyond the restricted circumference of the wrist of the infant and disposed the identification information along a longitudinal line parallel to the longitudinal axis of the infant's forearm. The acknowledged cause for this need was that infants have wrists of smaller diameters thereby prohibiting the use of standard identification bands that present identifying information that is not easily read. The Pulliam patent was a cited reference during the examination of the Vlerebome patent. Despite the acknowledgment of this problem over 25 years before the filing of the instant application and the association of Vlerebome with Pulliam, no one having ordinary skill in the art has combined the teachings of Pulliam with Vlerebome. Applicant submits that the acknowledged existence of this need for over 25 years without this need being met even in the face of the association of the primary reference Pulliam with prior art acknowledging this need is strong evidence of the non-obviousness of the claimed invention. *In re Mahurkar Patent Litigation*, 831 F.Supp. 1354, 1378-78, 28 USPQ2d 1801, 1819 (N.D. Illinois 1993), affirmed, 71 F.3d 1573, 37 USPQ2d 1138 (Fed.Cir. 1995) ("the existence of an enduring, unmet need is strong evidence that the invention is novel, not obvious, and not anticipated.").

As acknowledged by the prior art, the wrist or ankle of an infant or small child is of a smaller diameter than the wrist or ankle of an adult or adolescent. Thus, the recited limitations of an identification tag system for an infant or small child and a small diameter closed loop shape wrapped about a wrist or ankle of the infant or small child clearly provides a frame of reference for a person having ordinary skill in the art, thus making the age of the wearer and the "small diameter" limitation eminently relevant to the patentability of the claimed tag.

Applicant also traverses the assertion in the Office Action regarding claims 19 and 56 that a roll is a very long, very narrow sheet. Contrary to such assertion, a roll is made up of a continuous tape of identification bands or tags attached end-to-end such that the roll may be continuously fed through a printing device and used for multiple persons until the roll is used up. On the other hand, a sheet, typically standard size

paper, comprises a much more limited number of identification bands and/or tags which are all associated and completed in a single printer operation. Each sheet is individually fed through a printer as a new infant or child needs to be identified using the system. A person having ordinary skill in the art will realize that the considerations involved with a roll of a continuous tape are different from the considerations involved with a sheet of the identification bands and/or tags.

CONCLUSION

Accordingly, applicant submits that in light of the above amendments and arguments, claims 1-11, 16-23, 28, 30-34, 37, 42-49, 52, 54-58, 87 and 89-93 are in condition for allowance, notice of which is respectfully requested.

Respectfully submitted,

KELLY LOWRY & KELLEY, LLP

/Scott W. Kelley, Reg.No. 30,762/

Scott W. Kelley
Registration No. 30,762

SWK:nh
6320 Canoga Avenue, Suite 1650
Woodland Hills, CA 91367
(818) 347-7900